# IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI DUVVURU RL REDDY, VP**
**AND**
**SHRI RAJESH KUMAR, AM**

**ITA Nos. 781, 782,346,783,784,785,786/KOL/2026**
**(Assessment Years:2013-14, 17-18 to 20-21, 22-23 & 23-24)**

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| **BMW INDUSTRIES LIMITED**<br>3RD FLOOR, WHITE HOUSE, 119, PARK STREET,, KOLKATA-700016, WEST BENGAL | **Vs.** | **D.C.I.T., CC - 4(1)**<br>AAYAKAR BHAWAN POORVA, 110, SHANTI PALLY, E.M. BYPASS, KOLKATA-700107, WEST BENGAL |
| **(Appellant)** | | **(Respondent)** |

**PAN No. AABCB0986G**

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| **Assessee by** | : | Shri S.K. Tulsiyan & Ms. Lata Goyal, ARs |
| **Revenue by** | : | Shri V. Vidhyadhar, CIT DR |

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| **Date of hearing:** | 21.05.2026 |
| **Date of pronouncement:** | 23.06.2026 |

## ORDER

**Per Rajesh Kumar, AM:**

These are appeals preferred by the assessee against the orders of the Commissioner of Income-tax (Appeals), Kolkata-27 (hereinafter referred to as the "Ld. CIT(A)"] dated 22.11.2025,27.11.2025, 05.01.2026, 10.11.2025, 02.12.2025, 29.01.2026 for the AYs2013-14, 2017-18 to 2020-21, 2022-23 &2023-24.

2. At the outset, we note that the appeals of the assessee in ITA Nos. 781, 782, 783/KOL/2026 are barred by limitation by 27 days. Condonation applications along with affidavits for

condonation of delay were duly filed along with Form 36. At the time of hearing, the counsel of the assessee prayed that the delay of 27 days in filing of appeal may kindly be condoned. The ld. AR relied on the decision of Hon'ble Supreme Court decision in the case of Collector, Land Acquisition vs. Mst. Katiji& Ors. [167 1.T.R. 471 (SC)] wherein it has been held that the Courts should have a pragmatic and liberal approach while considering the petition for condonation of delay. Further, the Hon'ble Court also held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice should be preferred. Similarly, the Hon'ble ITAT Delhi in the case of Royal Airways Ltd. vs. ADIT reported in [2006] 98 ITD 259 (ITAT Dell) condoned the delay of 9 to 11 years in filing appeals by holding that it is a settled legal position that any delay caused on account of legal advice received or while perusing an abortive remedy should be treated as sufficient cause for such delay.

2.1. After hearing the rival contentions and perusing the materials available on record, we find that the delay is for bonafide and genuine reasons and, hence, we condone the delay and admit the appeals for adjudication.

**A.Y. 2013-14**

**ITA No. 781/KOL/2026**

3. The issue raised in ground no.1 is against the order of ld. CIT (A) confirming the disallowance of ₹56,79,609/- as made by the ld. AO u/s 14A of Read with Rule 8D of the IT Rules,

1962(Rules) by ignoring the fact that there is no exempt income earned by the assessee during the year. The other grounds raised are in support of ground no.1.

3.1. The facts in brief are that the assessee filed the return of income during the year u/s 139(4) of the Act on 30.08.2014, declaring income of ₹31,06,79,850/-. The case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) and notice u/s 143(2) of the Act dated 28.08.2015 and 142(1) of the Act dated 29.10.2015, along with questionnaire were duly issued and served upon the assessee. The ld. AO during the course of assessment observed that assessee has made a huge investments into shares and has not made any disallowance of expenses in relation to earning of exempt income and accordingly, called upon the assessee to explain the same. Finally, the ld. AO invoked the Rule 8D of the Rules and computed the disallowance in respect of interest proportionately at₹50,61,263/- and also applied 0.5% on the average value of investments which comes to ₹6,18,346/- thereby making aggregate disallowance of ₹56,79,609/-.

3.2. In the appellate proceedings, the ld. CIT (A) confirmed the same.

3.3. After hearing the rival contentions and perusing the materials available on record, we find that the undisputed facts are that during the year the assessee has not earned any exempt income. The assessee is engaged in the business of manufacturing of iron and steel, telecom and power, transmission of TMT bars, etc. In our opinion, no disallowance u/s 14A Read with Rule 8D of the Rules is called for as the assessee has not earned any exempt income u/s 10(34) of the Income-tax Act, 1961 (the Act). The case of the assessee find support from the decision of Hon'ble Delhi High Court in case of M/s Cheminvest Ltd. Vs. CIT, 378 ITR 33 (Del.), wherein it has been held that where there is no exempt income, no disallowance is warranted u/s 14A of the Act. Similar issue has been laid down by the Hon'ble Allahabad High Court in Income Tax Appeal No. 88 of 2014, Commissioner of Income Tax (I) Kanpur, Vs. M/s Shivam Motors (P) Ltd. [(2014) 272 CTR (All) 277] decided on 05.05.2014. The case of the assessee was also covered by the decision of REI Agro Ltd, Kolkata Vs. DCIT, Central Circle XXVII, Kolkata Being ITA No. 1331/KOL/2011 vide order dated 19.06.2013 and ACIT, Central Circle-XXVII, Kolkata Vs. M/s REI Agro Ltd, Kolkata in ITA no. 1423/KOL/2011, wherein the co-ordinate bench has held that the disallowance u/s 14A read with Rule 8D is to be made in relation to income which does not form part of the total income and this can be done only by taking into consideration the investments which has given rise to this income which does not form to the part of the income. The case of the assessee find support from the decision of Madras High Courtin case of Redington (India) Ltd. Vs. ACIT, Company Range-V reported in (2017) 392 ITR 633 (Mad), wherein it has been held that the provisions of Section 14A read with Rule 8D of the Rules cannot be applicable in a vacuum i.e. in absence of exempt income. We have also perused the decision of Hon'ble Delhi High Court in case of PCIT Vs. M/s Era Infrastructure (Ndia) Ltd. in ITA No. 204/2022 order dated 20.07.2022, wherein the Hon'ble Delhi High Court has held that amendment brought in by finance Act, 2022, is applicable prospectively with effect from A.Y. 2022-23 and till A.Y. 2021-22, the existing law shall be applicable that wherethere is no exempt income there is no disallowance u/s 14A of the Act. In view of the above facts and the ratio laid down in the various decisions, we are inclined to set aside the order of ld. CIT (A) and direct the ld. AO to delete the addition.

3.4. The appeal of the assessee is allowed.

**A.Y. 2017-18**

**ITA No. 782/KOL/2026**

4. At the outset, the ld. Counsel for the assessee brought to our notice that assessee has raised additional grounds vide letter dated 05.05.2026, which are extracted below for the purpose of ready reference:-

*"That, on facts and on circumstances of the case, the reopening u/s147 of the Act vide notice u/s 148 of the Act along with order u/s 148A(d) of the Act dated 27.07.2022 passed subsequent to the order of the Supreme Court case in UOI vs. Ashish Agarwal [[2022] 444 ITR 1 (SC) [04-05-2022]] is barred by limitation in view of the surviving time limit provided by the Hon'ble Supreme Court in the case of Rajeev Bansal [2024] 469 ITR 46 (SC)[03-10-2024]".*

*That, the reason which lead to reopening having not survived in the assessment made there was no information thus to uphold reopening u/s 148 of the Act.""*

4.1. The facts in brief are that the assessee filed the return of income on 05.11.2017 disclosing the total income at

₹12,76,90,150/-. Thereafter the notice u/s 148 of the Act was issued on 26.06.2021under the old provisions of the Act i.e. section 147 to 151 of the Act. Thereafter, in consonance with the order of Hon'ble Apex Court in case of Ashish Agarwal [20220 444 ITR 1 (SC) dated 04.05.2022, the ld. AO issued a show cause notice u/s 148A(b) of the Act on 02.06.2022 providing information to the assessee that income has escaped assessment. Thereafter, the ld. AO passed order u/s 148A(d) of the Act on 27.07.2022, reopening the case u/s 147 of the Act on the basis of information provided u/s 148A(b) of the Act. Accordingly, notice u/s 148 of the Act was issued on 27.07.2022. Thereafter, a search action u/s 132(1) of the Act was conducted on the factory and office premises of Bansal Group on 24.08.2022. Notice u/s 142(1) of the Act was served to the assessee to file the return of income in response to notice u/s 148 of the Act. Accordingly, the assessee filed the return of income on 18.02.2023, declaring total income of ₹12,76,19,150/-. Subsequently, notice u/s 143(2) & 142(1) of the Act along with questionnaire were issued and assessee made compliance thereto from time to time during the assessment proceedings. Finally, the assessment was made u/s 147 of the Act vide order dated 28.02.2023, by making various additions assessing the income at ₹14,54,17,523/- as against the return of income of ₹12,76,90,150/-.

4.2. The ld. Counsel for the assessee vehemently submitted before us that the order passed u/s 148A(d) of the Act and notice issued u/s 148 of the Act dated 27.07.2022, are hopelessly barred by limitations and so is the assessment framed consequently u/s 147 of the Act. The calculation as to how the case is barred by limitation was also submitted by the assessee as per the Rajeev Bansal case (supra).

4.3. We have heard the rival contentions and perused the materials available on record. We find that the notice u/s 148 of the Act under old regime was issued on 26.06.2021**.**Subsequent to the order of Hon'ble Supreme Court in the case of Ashish Aggarwal (2022)444 ITR 1(SC), the AO issued notice u/s 148A(b) of the Act on 2.6.2022along with information which suggested that the income has escaped assessment. The assessee replied the said show cause notice dated 2.6.2022 on 17.6.2022 and thereafter the AO after considering the reply of the assessee passed order u/s 148A(d) of the Act on 27.7.2022 re-opening the case of the assessee u/s 147 of the Act. The notice u/s 148 was also issued on the same date i.e. 27.7.2022. The ld. AR submitted that surviving time limit after accounting for all exclusions was 5 days only which is extended to 7 days as per sixth proviso. The ld. AR submitted that thus due date for issuance of notice 148 of the Act would be on 17.06.2022 + 7 days i.e. on 24.06.2022, however, the order u/s 148 A(d) of the Act was passed and notice u/s 148 of the Act was issued on 27.07.2022. For the sake of ready reference, the example given in Rajeev Bansal case (supra) as well as the calculation in the assessee's case are extracted below:-

| Particulars | Example Given in Rajeev Bansal | Timelines in the case of the assessee |
|---|---|---|
| Notice issued u/s 148 as per old law | 01.05.2021 | 26.06.2021 |
| Surviving Time Limit - After accounting for all the | 61 days computed from | 5 days |

| | | |
|---|---|---|
| exclusions, time limit- the assessing officer will have to issue a notice under Section **148 of th**e new regime | 01.05.2021 to 30.06.2021 | Computed from 26.06.2021 to 30.06.2021 (Extension to 7 days as per sixth proviso) |
| Response filed by the assessee | 18.06.2022 | 17.06.2022 |
| Due date of issuance of notice u/s 148 | 18.06.2022 plus 61 days<br><br>i.e. 18.08.2022 | 17.06.2022 plus 7 days<br><br>i.e. 24.06.2022 |
| Date of order u/s 148A(d) and notice u/s 148 | | 27.7.2022 |

4.3.1. In view of the facts, we are of the view that the case of the assessee is barred by limitation in terms of the decision of Hon'ble Apex Court in case of Rajeev Bansal (2024) 469 ITR 46 (SC) dated 03.10.2024, wherein the Hon'ble Supreme Court has held has under:-

*""111. The clock started ticking for the Revenue only after it received the response of the assesses to the show causes notices. After the receipt of the reply, the assessing officer had to perform the following responsibilities (1) consider the reply of the assessee under Section 149A(c): (i) take a decision under Section 1494(d) based on the available material and the reply of the assessee, and (iii) issue a notice under Section 148 if it was a fit case for reassessment. Once the clock started ticking, the assessing officer was required to complete these procedures within the surviving time limit. The surviving time limit, as prescribed under the Income Tax Act read with TOLA, was available to the assessing officers to issue the reassessment notices under Section 148 of the new regime.*

*112. Let us take the instance of a notice issued on 1 May 2021 under the old regime for a relevant assessment year. Because of the legal fiction, the deemed show cause notices will also come into effect from 1 May 2021. After accounting for all the exclusions, the assessing officer will have sixty-one days [days between 1 May 2021 and 30 June 2021] to issue a notice under Section 148 of the new regime. This time starts ticking for the assessing officer after receiving the response of the assessee. In this instance, if the assessee submits the response on 18 June 2022, the assessing officer will have sixty-one days from 18 June 2022 to issue a reassessment notice under Section 148 of the new regime. Thus, in this illustration, the time limit for issuance of a notice under Section 148 of the new regime will end on 18 August 2022."*

4.3.2. Therefore, respectfully following the decision of the Hon'ble Apex Court, we are inclined to quash the order passed u/s 148A(d) of the Act, the notice u/s 148 of the Act and also the consequent assessment framed u/s 147 of the Act.

4.4. The additional ground No.1 raised by the assessee is allowed.

5. Even on the second additional ground, whereby the assessee has challenged the reopening of assessment on the ground that the reasons which led to reopening have not survived in the assessment made and therefore, there is no information to uphold the reopening u/s. 148 of the Act. In other words , the reasons for which the re-opening was made , no addition was made on that account. We note that in this case the reopening of assessment was made for escapement of income of ₹7,20,000/- in respect of transactions with M/s Tirumala Tradecom Pvt. Ltd. and order u/s 148A(b) of the Act was also passed for the transaction of ₹7,20,000/- with the said company. However on perusal of the assessment order u/s 147 of the Act dated 25.05.2023, it is evident that the addition was not made in respect of the said transaction with M/s Tirumala Tradecom Pvt. Ltd. but the four additions were made namely;(i) disallowance u/s 36(1)(va) of the Act of ₹31,56,795/-, (ii) Disallowance of excess depreciation of ₹71,02,578/-; (iii) Addition u/s 68 of the Act of ₹73,00,000/- on account of loan from Drishti Advisors Pvt. Ltd.; (iv) Disallowance of interest of ₹1,68,000/- on loan taken from Drishti Advisors Pvt. Ltd. Therefore, on this score also the re-opening is bad in law. The case of the assessee was squarely covered by the decision of Hon'ble Bombay High Court in case

of CIT Vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bombay). Similarly, the Hon'ble Delhi High Court in case of Ranbaxy Laboratories Ltd. Vs. CIT (2011) 336 ITR 136 (Delhi), Calcutta High Court in case of CIT (Exemption) Vs. B.P. Poddar Foundation for education [2022] 448 ITR 695 (Calcutta) dated 13.09.2022. Therefore, we are inclined to held that the reopening of assessment has been invalidly made.

5.1. The appeal of the assessee is allowed.

6. The grounds raised on merits in the memorandum of appeal are not being adjudicated at this stage and are left open to be decided later on if need arises for the same.

**A.Y. 2018-19**

**ITA No. 346/KOL/2026**

7. At the time of hearing, we observe that the assessee has raised following additional grounds vide letter dated 12.05.2026, which are extracted below for the sake of ready reference:-

*"1. That, on facts and on circumstances of the case, the reopening u/s147 of the Act vide notice u/s 148 of the Act along with order u/s 148A(d) of the Act dated 28.04.2022 after expire of three years is barred by limitation as per section 149(1(a) of the Act.*

*2. That, the notice issued u/s 148A(b) of the Act issued without providing information and material which suggest that income of the assessee has escaped assessment is without jurisdiction and bad in law.*

*3. That, on the facts and in the circumstances of the case, the notice issued u/s.148 of the Act without complying with the ingredients of sec.148A of the Act and also without passing a speaking order is ab initio void, ultra vires and null in law.*

*4. That, regular assessment having been completed vide order 09.04.2021, the present reopening proceedings is purely a case of change of opinion.*

*5. That the order u/s 147 of the Act passed by the ld. AO is in violation to principle of natural justice in so far as no show cause notice was issued prior to passing of the assessment order."*

7.1. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised the above additional grounds of appeal, in our opinion the issued raised in the additional grounds is a purely a legal issue qua which all the facts are available in the appeal folder and no further verification of facts are required from any quarter whatsoever. In our considered view the assessee is at liberty to raise any legal issue before any appellate authority for the first time even when the same has not been raised before the lower authorities. The case of the assessee is squarely covered by the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT in 187 ITR 688 , ii) National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. [2017] 396 ITR 677 (Cal). Therefore, we are inclined to admit the same for adjudication.

8. The first issue raised in the additional ground is notice u/s 148 dated 28.04.2022, being barred by limitation as per the provisions of Section 149(1)(a) of the Act.

8.1. The facts in brief are that the assessee filed the return of income on 30.10.2018, declaring total income at ₹67,38,16,617/-. The case of the assessee was selected for scrutiny u/s 143(3) of the Act and the assessment was accordingly framed vide order dated 01.04.2021, accepting the returned income. Thereafter, the show cause notice was issued u/s 148 A(b) of the Act on 05.03.2022, wherein it was stated that the assessee has taken an accommodation entry of ₹35,00,000/- and ₹1,28,00,000/- from M/s Sankalp Vincom Pvt. Ltd and M/s Green View Developers Pvt. Ltd., respectively. However, the assessee objected to the said notice vide reply dated 26.03.2022, filed on the portal of the department. The assessee stated that the assessee was not provided with the information nor dissemination note/ final report by the Investigation Wing/ material relied upon by the ld. AO for issuing show cause notice. Thereafter, again notice u/s 148A(b) of the Act, was issued on 31.03.2022, stating the same transactions to have escaped income but again the assessee was not provided any information / dissemination note/ final note of the investigation which was relied upon by the ld. Assessing Officer. The assessee replied to the said show cause notice on 09.04.2022. Finally, the order u/s 148A(d) of the Act was passed on 28.04.2022, alleging that income of the assessee has escaped to the tune of ₹35,00,000/- and ₹1,28,00,000/- and notice u/s 148 of the Act was also issued on the same date i.e. 28.04.2022. In the meantime, a search action u/s 132 of the Act was conducted on the Bansal Group and its office premises on 28.04.2022. Thereafter, the notice u/s 142(1) of the Act was issued directing the assessee to file the return of income in response to notice issued u/s 148 on 28.04.2022. The assessee filed the return of income on 18.02.2023, declaring total income of ₹67,38,16,670/-. Subsequently, notice u/s 143(2) and 142(1) of the Act, were issued along with questionnaire which were duly replied by the assessee. Thereafter, the ld. AO framed the assessment u/s 147 dated 25.05.2023, by making various additions thereby assessing the income at ₹68,74,91,162/-.

8.2. The assessee preferred the appeal before the ld. CIT (A), however, the ld. CIT (A) after taking into account the contentions and submissions of the assessee confirmed the additions made by the ld. Assessing Officer.

8.3. We have heard the rival contentions and perused the materials on records. The ld. Counsel of the assessee has contended that the notice issued u/s 148 of the Act is barred by limitation in terms of provisions of section 149(1)(a) of the Act as the case of the assessee does not within the scope of section 149(1)(b) of the Act. We note that in the instant case of the assessee, notice u/s 148A(b) of the Act was issued on 15.03.2022 wherein the due date of reply was 22.03.2022. The assessee filed reply after due date on 26.03.2022. Hence if period from 15.03.2022 to 26.03.2022 excluded , then the time limit left with the AO to pass order u/s 148A(d) of the Act by 31.03.2022 was 5 days. Therefore, when the said period is extended to 7 days, the order u/s 148A(d) was to be passed and notice u/s 148 was to be issued by 02.04.2022. however, the Id.AO did not pass order within that date. Thus, the notice is barred by the limitation in terms of section 149(1)(a) of the Act. For the sake of ready reference, we extract the provisions of section 149(1) of the Act and provisos thereto as under:

*149. (1) No notice under section 148 shall be issued for the relevant assessment year,*

*(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*

*(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax. represented in the form of*

*(i) an asset:*

*(ii) expenditure in respect of a transaction or in relation to an event or occasion; or*

*(iii) an entry or entries in the books of account,*

*which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]*

*Provided…………………..*

*Provided that…………….*

*Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:*

*Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly."*

8.3.1. Thus, a perusal of the above provisions of section 149(1)(a) conjointly with third and fourth proviso makes it abundantly and absolutely clear that the notice issued after period of three years from the end of relevant assessment year as extended by the time lime provided in fourth proviso is hopelessly barred by limitation and is bad in law. A perusal of provisions of section 149(1)(a) reveals that notice u/s 148 of the Act, shall be issued within period of 3 years for cases not falling u/s 149(1)(b) of the Act. Where the period of 3 years has expired, a notice shall be issued as per provision of section 149(1)(b) of the Act.

8.3.2. We note that the third and fourth proviso to section 149(1) of the Act provide for certain exclusions and extensions for determining the period of limitation u/s 149(1) of the Act. As per third proviso, time allowed or extended time allowed to the assessee to file response to notice u/s 148/A(b) of the Act shall be excluded. Thereafter, fourth proviso provides that immediately after exclusion of period as per third proviso, if the AO has less than 7 days to pass order u/s 148A(d) of the Act, then such remaining period shall be extended to seven days and the period of limitation u/s 149 shall be deemed to have been extended accordingly. This means where the AO is left with less than 7 days for passing order, he has to pass order u/s 148A(d) of the Act and issue notice u/s 148 pf the Act within 7 days.

8.3.3. We also note that a fresh notice u/s 148 was issued on 31.03.2022 which was same in all respect with the notice issued u/s 148 of Act dated 15.03.2022. We note that there was no reference to the notice dated 15.03.2022 in the second notice issued u/s 148 of the Act. We also note that the second notice issued u/s 148 of the Act referred to the same approval dated 09.03.2022. The due date of reply as per notice was 11.04.2022 and the reply was filed by assessee on 09.04.2022. Now again as per the limitation provided in section 149 of the Act, the period upto 11.04.2022 is excluded and the AO had no time to pass order u/s 148A(d) of the Act. With the extension of 7 days as per fourth proviso to section 149(1) of the Act, the order u/s 148A(d) of the Act was to be passed within 18.04.2022 i.e. [11.04.2022 plus 7 days). However, the Ld.AO passed order u/s 148A(d) of the Act and issued notice u/s 148 of the Act on 28.04.2022 i.e. after expiry of limitation of 3 years as extended by fourth proviso on 18.04.2022 under section 149(1) of the Act. Hence the notice u/s 148 of the Act dated 28.04.2022 is also barred by limitation as per section 149(1)(a) of the Act and the Ld.AO should have issued the same in compliance with the provision of section 149(1)(b) of the Act which was not done. Therefore, present reopening proceedings u/s 148 of the Act is without jurisdictions and bad in law. Consequently, the additional ground no.1 is allowed.

8.4. The additional ground no. 1 is allowed.

9. The additional ground no.2 is in relation to notice issued u/s 148A(b) of the Act without providing any information/ dissemination note, final report on investigation/ material relied upon for reopening the case and therefore, the show cause notice as well as the subsequent proceedings is bad in law.

9.1. We have heard the rival contentions and perused the material on records including the relevant provisions of the Act as cited before us by the Counsel for the assessee. The ld. AR vehemently submitted that notice u/s 148 cannot be issued unless there is information with the AO which suggest that the income chargeable to tax has escaped assessment in the case of the assessee. The relevant provision of section 148 of the Act has been extracted as under for the sake of ready reference:

*"Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:"*

9.1.1. Further what is information provided under Explanation 1 , the same is reproduced as under for ready reference:

*"Explanation 1. For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,*

*(i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; or*

*(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act: or*

*(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or*

*(iv) any information made available to the Assessing Officer under the scheme notified under section 1351; or*

*(v) any information which requires action in consequence of the order of a Tribunal or aourt."*

9.1.2. On perusal of aforesaid Explanation 1, it shall be clear that the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means shall be any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time. Other clause not applicable in the case of the assessee.

9.1.3. Further, on perusal of both notices u/s 148A(b) of the Act dated 15.03.2022 and 31.03.2022, it shall be evident that the Ld.AO has made mere allegation without providing any information which suggest that the income of the assessee has escaped assessment. The Id.AO has not provided the nature of transaction, date of transaction, whether it is through bank or cash etc. The Ld.AO has also not provided dissemination note/final report of investigation/material relied upon for reopening the case of the assessee. In fact the notices itself proved that the Ld.AO has only made allegation without relying and also without providing any information as to why such allegation has been made. Hence, the very condition for issuance of the notice u/s 148 of the Act that the Ld.AO must have information which suggests that the income chargeable to tax has escaped assessment fails. The condition u/s 148A(b) of the Act that the Ld.AO should provide assessee an opportunity with the information which suggests that income chargeable to tax has escaped assessment was not complied with as no information/ material was provided to the assessee.

9.1.4. The Hon'ble Supreme Court in the case of Union of India v. Ashish Agarwal [[2022] 444 ITR 1 (SC)[04-05-2022/1, while dealing with the notices issued under old provision of section 148 of the Act has also directed the assessing officer to provide to the respective assessees' information and material relied upon by the Revenue, so that the assessees' can reply to the show-cause notices within two weeks thereafter. The relevant extracts of the decision of Hon'ble Supreme Court is as under:

*(1) The impugned section 148 notices issued to the respective assessees which were issued under unamended section 148 of the IT Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 1484 of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assesees can reply to the show-cause notices within two weeks thereafter;"*

9.1.5. Further, the Hon'ble Supreme Court in the case of Union of India v. Rajeev Bansal [[2024] 167 taxmann.com 70 (SC)/ has also held that a show cause notice is effectively issued in terms of Section 148A(b) only if it is supplied along with the relevant information and material by the assessing officer. The relevant extracts of the decision of the Hon'ble Supreme Court is as under:

*"106. In Ashish Agarwal (supra), this Court directed the assessing officers to provide relevant information and materials relied upon by the Revenue to the assesses within thirtydays from the date of the judgment. A show conce notice is effectively issued in terms of Section 148A(b) only if it is supplied along with the relevant information and material by the assessing officer. Due to the legal fiction, the assessing officers were deemed to have been inhibited from acting in pursuance of the Section 148A(b) notice till the relevant material was supplied to the assesses. Therefore, the show cause notices were deemed to have been stayed until the assessing officers provided the relevant information or material to the assesses in terms of the direction issued in Ashish Agarwal (supra). To summarize the combined effect of the legal fiction and the directions issued by this Court in Ashish Agarwal (supra) is that the show cause notices that were deemed to have been issued during the period between 1 April 2021 and 30 June 2021 were stayed till the date of*

*supply of the relevant information and material by the assessing officer to the assessee. After the supply of the relevant material and information to the assessee, time begins to run for the assesses to respond to the show cause notices*

9.1.6. On perusal of decisions of the Hon'ble Supreme Court in the aforesaid cases, it shall be evident that it was mandatory for the Ld.AO to provide all the information and material relied upon along with notice u/s 148A(b) of the Act. However, no such information and material was provided and it was merely alleged that the assessee has received accommodation entry from those two companies. Hence notice u/s 148A(b) of the Act issued by the Id.AO without providing any information itself is bad in law and so the entire proceedings u/s 148 of the Ac is bad in law.

9.1.7. Similarly, the Hon'ble Bombay High Court in the case of Anurag Gupta vs. ITO& Ors. in [2023] 454 ITR 326 (Bom) as deciding the said issue by observing and holding as under:

*"Heard Learned Counsel for the parties.*

*The main ground of challenge as was urged by Mr. Walve, learned counsel for the petitioner during the course of hearing can be summarized as under:*

*It was urged that the procedure as prescribed under section 148A(b) of the Act as also the principles of natural justice had been violated, inas-much as while the petitioner was given the information in terms of section 148A(b) of the Act, the material which ought to have been provided to the petitioner was not so furnished, in the absence whereof the petitioner was precluded from filing an effective reply to the show-cause notice..*

*Mr. Manwani, learned counsel for the Revenue on the other hand stated that there was no such obligation cast upon the Revenue in terms of section 148A(b) of the Act to provide to the assessee anything beyond pro-viding him the information.*

*Per contra, Mr. Walve, learned counsel for the petitioner drew our attention to the apex court judgment in the case of Union of India v. Ashish Agarwal [2022] 444 ITR 1 (SC); (2022] 138 taxmann.com 64 (SC) and in particular paragraph 10 thereof which reads as under (page 22 of 444 ITR):*

*"The impugned section 148 notices issued to the respective asses-sees which were issued under unamended section 148 of the Income-tax Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the Income-tax Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of section 148A(b). The Assessing Officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter;"*

*Mr. Walve, stated that in the present case the Revenue had independently issued a notice to the petitioner in terms of section 148A(b) of theAct in accordance with the provisions of the Finance Act. 2021 and was not a case where notices issued under section 148 under the old provisions were to be the substituted provisions, which came into effect from April 1, 2021.*

*It was urged that the requirement of section 148A(b) of the Act has clearly been spelt out in the direction supra, which envisages that not only information be provided to the petitioner but also the material relied upon by the Revenue for purposes of making it possible to file a reply to the show-cause notice in terms of the said section.*

*In the present case admittedly, no material had been supplied to the petitioner, notwithstanding the fact that there was material available with the Assessing Officeras can be seen from the order passed by the Assessing Officer under section 148A(d) of the Act. -*

*This was in the shape of a statement recorded, during survey action of the partner of BGR Construction LLP. There also appears to be a sale list, which was allegedly found during the search operations containing the names of 72 investors including the petitioner which although referred to in the order under section 148A(d) of the Act as also in the clarification communication dated March 21, 2022 was not provided to the petitioner. Interestingly, while the communication dated March 21, 2022, did say that the list of total sale "was being attached for the ready reference of the petitioner for purposes of submitting a reply to the show-cause notice, no such list was admittedly furnished".*

*It goes without saying that providing information to the petitioner, without furnishing the material based upon which the information is pro-vided, would render an assessee handicapped in submitting an effective reply to the show-cause notice, thereby rendering the purpose and spirit of section 148A(b) of the Act totally illusive and ephemeral. The fact that the material also was required to be supplied can very well be gauged from the clear directions issued by the Supreme Court in the case of Union of India v. Ashish Agarwal [2022] 444 ITR 1 (SC).*

*Two other arguments were raised by Mr. Walve during the course of argument, pertaining to the failure on the part of the Assessing Officer to obtain the prior approval from the specified authority before issuing the clarification communication dated March 21, 2022, as also the fact that the Assessing Officer ought to have first conducted an inquiry in terms of section 148A(a) of the Act. However, we do not deem it absolutely necessary to deal with these issues in the present petition.*

*Be that as it may, we hold that the reassessment proceedings initiated are unsustainable on the ground of violation of the procedure prescribed under section 148A(b) of the Act on account of failure of the Assessing officer to provide the requisite material which ought to have been supplied along with the information in terms of the said section.*

*In view of the above, the petition is allowed. The order impugned dated March, 25,2022 passed under Section 148A(d) of the Act, the notice impugned dated March 26,2022 under Section 148 of the Act are hereby quashed. It would be however open to the Revenue to proceed in the matter from the stage of the notice under Section 148A(b) of the Act by supplying the relevant material, if it is otherwise permissible keeping in view the issue of limitation.*

*The writ petition is disposed of accordingly."*

9.1.8. Considering the facts of the assessee in the light of the above decisions, we allow the additional ground no.2.

9.2. The additional ground no.2 is allowed.

10. Since, we have allowed the issues in favour of the assessee on two additional grounds deciding the legal issues, therefore, the remaining two additional grounds and grounds on merits are not being adjudicated at this stage and are being left open to be decided of need arises for the same in future.

**A.Y. 2019-20**

**ITA No. 783/KOL/2026**

11. The issue raised by the assessee in ground no.1 is against the order of ld. CIT (A) confirming the addition of ₹7,20,000/- as made by the ld. AO/CPC, u/s 14A of the Income-tax Act, 1961 (the Act) by ignoring the fact that as exempt income duly declared in the return of income under Schedule A-P/L.The other grounds are in support of ground no.1.

11.1. The facts in brief are that the assessee filed the return of income on 31.10.2018, declaring total income at ₹65,95,39,955/- as income from business and profession in Schedule BP of return of income under the normal provisions of the Act and deemed total income u/s 115JB of the Act of

₹63,52,53,211/-. The ld. AO passed intimation u/s 143(1) of the Act, assessing the normal income at ₹66,17,96,631/-, thereby making an addition of ₹22,55,676/- comprising ₹7,20,000/- as exempt income and ₹15,35,676/- on account of employer contribution to EPF.

11.2. The ld. CIT (A) in the appellate proceedings, confirmed the said order of ld. AO/ CPC by confirming both the additions.

11.3. Aggrieved assessee preferred the appeal before the Tribunal challenging the confirmation of addition on account of exempt income of ₹7,20,000/-.

11.4. After hearing the rival contentions and perusing the materials available on record, we find that the assessee has shown the exempt income from dividend in the return of income which the ld. AO/ CPC added to the income of the assessee while processing the return of income. In our opinion, there cannot be any addition to the income on account of exempt income. Therefore, we set aside the order of ld. CIT (A) and direct the ld. AO to delete the addition.

11.5. The appeal of the assessee is allowed.

**A.Y. 2020-21**

**ITA No. 784/KOL/2026**

12. The only issue raised by the assessee in ground nos. 1 and 2 is against the confirmation of addition of ₹99,61,086/- by the ld. CIT (A) as made by the ld. AO in respect of provision for

payment of gratuity u/s 40A(7) of the Income-tax Act, 1961 (the Act).

12.1. After hearing the rival contentions and perusing the materials available on record, we find that the assessee has claimed in the return of income the provisions for the payment of gratuity u/s 40A(7) of the Act in the return of income filed on 15.02.2021, declaring total income of ₹40,50,96,350/-. The ld. AO /CPC while processing the return of income added the said amount to the income of the assessee. Thereafter, the case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) and in the assessment u/s 143(3) read with section 144B of the Income-tax Act, 1961 (the Act) dated 23.09.2022 was framed. The ld. AO again added the said provisions for payment of gratuity u/s 40A(7) of the Act of ₹99,61,086/-, which has resulted into double disallowances of the same amount. We not that in the appellate proceedings, the ld. CIT (A) restored the issue to the file of the ld. JAO for looking into the issue. In our opinion, the order of ld. CIT (A) restoring the issue to the file of the ld. JAO to examine and verify the facts which are apparently available in the appeal folder is not appreciated. In our opinion, there has been double disallowances of the same amount in respect of payment of gratuity u/s 40A(7) of the Act. Accordingly, we set aside the order of ld. CIT (A) on this issue and direct the ld. JAO to delete the addition of ₹99,61,086/-.

12.2. The appeal of the assessee is allowed.

**A.Y. 2022-23**

**ITA No. 785/KOL/2026**

13. The issue raised in ground nos.1 & 2, is against the order of ld. CIT (A) partly confirming the addition to the tune of ₹2,47,49,030/- by applying the estimated NP of 4.77% on the alleged bogus purchases of ₹51,88,47,606/- (₹49,68,19,685/- + ₹2,20,27,921/-) as against the addition made by the ld. AO of ₹3,97,45,575/- by applying a GP rate of 8% on the alleged bogus purchases.

13.1. The facts in brief are that the assessee filed the return of income on 17.11.2022, declaring nil income. A search and seizure action u/s 132(1) of the Act was conducted on 24.08.2022 and subsequent dates on the group entities of Bansal Group and its related persons. The assessee being a flagship company of the said group was also covered under the said search. The case of the assessee was selected for compulsory scrutiny. Notice u/s 143(2) was issued and duly served upon the assessee. Thereafter, the notice u/s 142(1) of the Act was issued along with the questionnaire which was replied by the assessee. The ld. AO, on the basis of seized document marked as AD/1 found during the course of search and seizure from the resident of Anita Dalmia, located at 11/1, Dalmia Bhawan, Madhab Ghosh Road, Salkia, Howrah-711106, on 24.08.2022, found that the said document contained notings of certain transactions relating to bogus purchases made by the assessee company. Accordingly, AO asked the assessee to furnish the reply explanation which was replied by the assessee vide letter dated 17.05.2023, by submitting that the said document was recovered from the residence of Anita Dalmia during the course of search and was prepared by her. It was submitted that assessee has nothing to do with the same. The assessee submitted that the purchases made by the assessee were genuine as all the suppliers were having substantial turnover and the creditworthiness. All these parties have shown the sales in their respective ITR and therefore, the same could be considered as non-genuine. Further the assessee submitted that purchases made from these concerns were used in the manufacturing process and had the purchases not made, it would not have been possible to manufacture the finished goods by the assessee. The assessee also furnished the yield statement stating consumption, production and bye product etc. The reply of the assessee did not find favour with the ld. AO and he finally added an amount of ₹3,97,45,575/- by applying a GP rate of 8% of the said purchases of ₹49,68,19,685/- by holding that the assessee has failed to prove beyond doubt the purchases found in the seized document AD-1.

13.2. In the appellate proceedings, the ld. CIT (A) after taking into account the reply/ submission/ contention of the assessee partly allowed the appeal by directing the ld. AO to restrict the addition to the profit rate of 4.77% thereby, sustaining the addition to the extent of ₹2,47,49,030/-. Simultaneously, the ld. CIT (A) also directed that the said amount shall be reduced by the regular net profit percentage already offered in the profit and loss account. The ld. CIT (A) while deleting the addition observed and held as under:-

*"5.2 Discussion and decision:*

*5.2.1. I have perused the assessment order as well as the submission of the assessee. On perusal of the same, it is noticed that during the year under consideration, the assessee has entered into purchase transactions of raw materials amounting to Rs.49.68,19,685/- with several parties viz. M/s R.S. Bokaro Metal Pvt. Ltd. (RSBMPL), M/s Shree Paras Metal (SPM), M/s ChandukaHightech Steel Pvt. Ltd. (CHSPL) & Bharat Rerolling Mills Ltd. (BRML). However, it is also observed that statement of Mrs. Anita Dalmia, manager internat Audit and Shri. Ram Gopal Bansal, Director of Bansal Group were recorded u/s 132(4) of the Act, wherein Mrs. Dalmia had confirmed on the basis of seized material AD/1 that M/s BMW Industries Ltd i.e., the appellant has made bogus purchase from the above entities. It is observed that on the sole basis of the said statement recorded of Mrs. Anita Dalmia, the AO had treated the said purchases made by the assessee as bogus and determined undisclosed profit made from such bogus purchases at Rs.3,97,45,575/- by applying 8% on such purchase amounting to Rs.49.68 Crores.*

*5.2.2. Further, it is also observed that the assessee has also entered into purchase transactions of raw materials amounting to Rs.2,20,27,921/- with a party namely viz. M/s Basuki Steel (BS). However, it is also observed that statement of Mrs. Anita Dalmia, manager internal Audit and Shri. Ram Gopal Bansal, Director of Bansal Group were recorded u/s 132(4) of the Act, wherein Mrs. Dalmia had confirmed on the basis of seized material AD/1 that M/s BMW Industries Ltd i.e., the appellant has made bogus purchase from the above entity and after the transaction. It is observed that on the sole basis of the said statement recorded of Mrs. Anita Dalmia, the AO had treated the said purchases made by the assessee as bogus and determined undisclosed profit made from such bogus purchases at Rs. 17,62,234/- by applying 8% on such purchase amounting to Rs.2.20 Crores.*

*5.2.3. It is observed that during the asst. proceedings, the assessee had contended that all the aforesaid parties from whom the said purchases of Raw materials were made were genuine parties and the income filed by those parties for the subjected year were quite high and the AO had not brought any independent evidence on record to substantiate the fact that the aforesaid parties were bogus parties and the corresponding purchase transactions are ingenuine. The assessee had also claimed that the person from whom the statements was recorded i.e., Mrs. Anita Dalmia was in bad books with the assessee company. It had also claimed that the incriminating materials pertaining to such alleged bogus purchases were seized from the residential premises of Mrs. Dalmia not from the business premises of the assessee company. It had also claimed that it had no knowledge of the fact* *that Mrs. Dalmia had prepared such forged and parallel documents to frame the assessee, where these seized documents had no nexus with the business nitty-gritty of the assessee. Further, it had also contended that the said statements of Mrs. Dalmia were retracted before the First-Class Magistrate just after concluding of the said search operation. However, the contentions of the assessee were not accepted by the AO and the corresponding addition was made (supra).*

*5.2.4. During the appellate proceedings, the appellant had contended that the purchases. made from the aforesaid parties were genuine as they filed considerably high income in their ITRs for the subjected year. The appellant had also claimed that it had purchased raw materials from the aforesaid parties in regular course of business and consumed the same for procuring finished goods. The assessee is involved in the business of manufacturing iron and steel products, TMT bars and pipes etc. For the process of manufacturing various raw materials are needed which the assessee purchases from different vendors. All the corroborative evidential documents viz. relevant bills, invoices, Lorry receipts, Gate passes etc. were produced by the appellant during the asst. and appellate proceedings. The details as received from MCA website is appended hereunder:*

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Basic Information

| | |
|---|---|
| CIN | U27101WB1999PTC089071 |
| Name | R S BOKARO METAL PRIVATE LIMITED |
| Listed on Stock Exchange | Unlisted |
| Company Status | Active |
| ROC | ROC Kolkata |
| Registration Number | 89071 |
| Company Category | Company limited by shares |
| Company Sub Category | Non-government company |
| Class of Company | Private |
| Date of Incorporation | 1999-03-26 |
| Age of Company | 26 years, -1 months, 17 days |
| Activity | **NIC Code:** 271<br>**NIC Description:** Manufacture of Basic Iron & Steel |
| Number of Members | 0 |

Basic Information

| | |
|---|---|
| CIN | U74999WB2011PTC164132 |
| Name | SHREE PARAS METAL AND HANDICRAFTS PRIVATE LIMITED |
| Listed on Stock Exchange | Unlisted |
| Company Status | Active |
| ROC | ROC Kolkata |
| Registration Number | 164132 |
| Company Category | Company limited by shares |
| Company Sub Category | Non-government company |
| Class of Company | Private |
| Date of Incorporation | 2011-06-24 |
| Age of Company | 13 years, 8 months, 19 days |
| Activity | **NIC Code:** 7499<br>**NIC Description:** Other business activities n.e.c.[This class includes service activities generally delivered to commercial clients] |
| Number of Members | 0 |

*5.2.5. It is observed that the A.O has not enquired and cross checked the genuineness of existence of such companies and went ahead with a preconceived notion based on the information erupted during the period of investigation prior to disseminating the same to the A.O. However, the* *appellant had also contended that during the course of search and survey operation, various evidences in support of such purchases were found. It was also reiterated that during both the assessment and appellate proceedings, details of such purchases, relevant bank account statements showing payment against such purchases, relevant invoices purchase bills were produced. Again, during the course of survey operation, a physical verification of goods were taken by the investigation wing and a part of goods whichwere purchased from the parties, whose details were inventoried in the excel sheet maintained by Anita Dalmia, lying in the godown. The same was duly verified by the AO and no adverse inference was drawn except calculating eight percent (8%) of Net profit on the part of purcahses labelled as Bogus Purchases. Further, the appellant had adduced Annexure-11 in the appellate proceedings, containing the inventory of stock found from the factory premise of M/s BMW Industries Limited. Thus, the AO had not contradicted the evidence of goods purchased from these parties which were found during the course of survey, but doubted without any finding and corroborative incriminating evidences and adverse inference was drawn by the AO relied upon the retracted statement of Mrs. Dalmia. Hence, the allegation and adverse opinion formed by the AO against the soundness of the said entities is based on surmises and conjectures.*

*5.2.6. The appellant had submitted copies of party wise purchase ledgers, bank statements evidencing the payment to such parties, relevant bills and invoices, confirmation of accounts provided by the said parties during both the proceedings, as evident from the asst. order itself. Hence, no corroborative evidence was brought by the AO to opine the said seller concerns and the corresponding sales transactions with the appellant are bogus. Reliance may be placed on the following judgments:*

*a) In the case of 'CIT v. Odeon Builders (P.) Ltd. as reported in [2019] 110 taxmann.com 64 (SC)'.*

*The fact of the case is: Section 37(1) of the Income-tax Act, 1961 Business expenditure -Allowability of (Bogus purchase) Certain portion of purchases made by assessee was disallowed - Commissioner (Appeals) found that entire disallowance was based on third party information gathered by Investigation Wing of Department, which had not been independently subjected to further verification by Assessing Officer and he had not provided copy of such statements to appellant, thus, denying opportunity of cross examination to appellant, who on other hand, had prima facie discharged initial burden of substantiating purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and fact of payment through cheques, VAT Registration of sellers and their Income-tax Return He held that purchases made by appellant was acceptable and disallowance was to be deleted - Tribunal dismissed revenue's appeal - High Court affirmed judgments of Commissioner (Appeals) and Tribunal being concurrent factual findings Whether no substantial question of law arose from impugned order of Tribunal -Held, yes [Para 4] [In favour of assessee]*

*The relevant portion of the judgement is as under:*

> *"3. However, on going through the judgments of the CIT, ITAT and the High Court, we find that on merits a disallowance of Rs. 19,39,60,866/- was based solely on third party information, which was not subjected to any further scrutiny. Thus, the CIT (Appeals) allowed the appeal of the assessee stating:*
>
> *"Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected tofurther verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques. & VAT Registration of the sellers & their Income Tax Return. In view of the above discussion in totality, the purchases made by the appellant from M/s Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs 19,39,60,866/-, is directed to be deleted"*
>
> *4. The ITAT by its judgment dated 16th May, 2014 relied on the self-same reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5th July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT*
>
> *5. In these circumstances, the Review Petitions are dismissed."*

*b) In the case of 'PCIT vs. Nitin Ramdeoji Lohia as reported in [2022] 145 taxmann.com 546 (Bombay)'. Where Assessing Officer made addition by disallowing expenses on purchases on ground that an information was received from sales tax department that assessee was beneficiary of accommodation entries on account of bogus purchases, since Assessing Officer had not disputed corresponding sales transactions, purchases also could not be bogus and, thus, impugned addition made on account of bogus purchases to be deleted. Relevant portion of the judgement is as under:*

> *"We are in agreement with the view expressed by the CIT (Appeals) that, if the purchases are bogus, it would be impossible for the assessee to complete the business transaction and that if the purchase is bogus, the corresponding sale also must be bogus or else the transaction would be impossible to complete and as a necessary corollary, unless the corresponding sale is held to be bogus, the purchase also cannot be held to be bogus, rather it would be a case of purchase from bogus entities/parties. That view has been upheld by the Tribunal in principal while dismissing the appeal of the Revenue. In view of the above, we are of the opinion that the questions of law proposed as (a), (b), and (c) in the appeal cannot be said to be substantial questions of law.*
>
> *Insofar as the question of law framed as (d) is concerned, we find that the Tribunal has not addressed the issue of adopting the gross profit rate of 5% on the alleged Hawala purchase of Rs. 2.45 crores as against the rate of*

> *0.69% declared by the assessee, despite the fact that the CIT (Appeals) had specifically gone into that question in its order dated 18th August, 2015 and had directed the A.O. to make 5% addition in the gross profit ratio, while deleting the balance addition.*
>
> *We, therefore, deem it appropriate to remand the matter back to the Tribunal only to the limited extent of going into that issue. Parties to appear before the Tribunal on 05th December, 2022 and orders to be passed thereupon, preferably within a period of three months thereafter.*
>
> *The decision taken above in ITA No. 673 of 2018 shall apply mutatis and mutandis to ITA NO 750 of 2018 in the result, both the appeals are, accordingly, disposed of."*

*5.2.7. As no books of accounts were rejected by the AO in the asst. proceedings, estimation of profit 8% on the recorded sales made by the assessee by rejecting profit already offered in books of accounts. It means the AO had not disputed the purchases and corresponding sales except adhering to the net profit rate. The appellant offered gross profit 4.77% before claiming all establishment/incidental cost whereas the A.O. arrived at 8% of Net profit without recasting trading account, after failing to reject the books of accounts. However, the ground no.2 of the instant appeal reveals that an alternative formula was offered by the appellant itself during the assessment proceeding to compute the net profit on bogus purchase labelled by the AO, which is enunciated from the said ground of appeal and reproduced as follows-*

> *2. That the Ld AO having admitted the alternate plea of the assessee, though not admitted, to calculate GP and to add the total income instead of addition of the cost of the entire purchase said to be bogus has also ered calculating and adding profit on estimate basis at 8 percent on the purchase of Rs.49,68,19,685-said to be bogus, ie Rs 3.97.45.575/- without considering that after eliminating the duplication the total purchase said to be bogus was Rs. 43.73.25 895/- and a GP 477 percent, i.e. Rs.2,08,60,445/- as earned on the self-could at the most be manufacturing activity added*

*5.2.8. After perusing the aforesaid contention of the assessee containing in the above ground raised by the assessee, it is justifiable to apply net profit rate of 4.77% on such bogus purchase of Rs.51,88,47,606/- to determine the undisclosed estimated net profit of the assessee for the subjected AY 2022-23, which comes to Rs.2,47.49,030/- but, subjected for further reduction by an amount after applying the regular net profit percentage already offered within the Profit and loss account on such bogus purchase of Rs.51.88.47.606/- as per financial statement of the AY 2022-23. Hence, addition on such estimated profit is restricted to (Rs.2,47,49,030/- minus Reduced amount after applying the regular net profit percentage already offered within the Profit and loss account) only. Therefore, the addition is reduced and modified accordingly, as pleaded by the assessee during the assessment and also in appellate proceedings. Consequently, these grounds of appeal raised by the appellant are partly allowed."*

13.3. After hearing the rival contentions and perusing the materials available on record, we find that a search action was conducted on the assessee u/s 132 of the Income-tax Act, 1961 (the Act), besides, a similar action on the Anita Dalmia. During the course of search, no incriminating material was found from the premises of the assessee, however, a document marked as AD/1 was found from the residence of Smt. Anita Dalmia located at 11/1, Dalmia Bhawan, Madhab Ghosh Road, Salkia, Howrah-711106, on 24.08.2022. The said person was retainer of the company who turned hostile having animosity and bad blood with the company. During the course of search, her statement was also recorded. We note that the assessee has filed a FIR against her, copy of which is available at page no.69 of the Paper Book. We note that the lady was dismissed by the company for her bad and contemptuous attitude towards company. The said lady withdrew the statement recorded during search on 29.08.2022, which is also placed at page no. 70 and 71 of the Paper Book. We note that the said document was not found from the office of the premises and the assessee also denied the ownership of the said documents. During the course of assessment proceedings, Smt. Anita Dalmia was not examined by the ld. AO nor any cross examination was provided to the assessee. The ld. AO simply made the addition in respect of bogus purchases on the basis of seized document AD-1. Finally, the ld. AO applied the rate of 8%. The ld. CIT (A) in the appellate proceedings, accepted the fact that the books were not rejected by the ld. AO in the assessment proceedings. During the course of appellate proceedings, the ld. AO conducted an enquiry and issued notice on the assessee on 03.12.2025, proposing an enhancement of purchase of ₹49,68,19,685/-, which was replied by the assessee on 09.01.2026, submitting all the copies of invoices, e-way bills, gate pass, bank statement, ledger account, explaining the genuineness of the purchases which are available from page no.91 to 414.The ld. CIT (A) also noted that the ld. AO has not disputed the purchases or corresponding sales except making addition applying net profit rate. The ld. CIT (A) also noted that the assessee offered GP rate of 4.77%. However, the ld. CIT (A) also partly sustained the addition at the rate of 4.77% without any basis. In our opinion, when the allegation made by the ld. AO are brushed aside by the ld. CIT (A) and the purchases were treated as genuine then the acceptance of the alternative plea of the assessee directing the ld. AO to apply a GP rate 4.77% appears to be incorrect and cannot be sustained. In our opinion, once the purchases are accepted as genuine, no addition can be made on account of bogus purchases by applying GP rate. Consequently, we set aside the order of ld. CIT (A) directing the ld. AO to delete the addition.

13.4. Ground no.1 and 2 raised by the assessee are allowed.

14. The issue raised in ground no.3, is against the order of ld. CIT (A) setting aside the addition of ₹2,24,58,880/- as made by the ld. AO u/s 69C of the Act for a fresh adjudication by

ignoring the fact that assessment was completed u/s 143(3) of the Act and not u/s 144 of the Act.

14.1. The facts in brief are that the ld. AO during the course of assessment proceedings noted from the seized document AD/1 that assessee has entered into certain cash transactions. The said cash transactions for the sake of ready reference are as under:-

| *Sl No.* | *Name* | *Cash Receipt* | *Cash payment* |
|---|---|---|---|
| *1.* | *Basuki* | *1,97,25,000* | |
| *2.* | *Bhagatjee* | *38,76,120* | |
| *3.* | *Ramdoot* | | *2,26,95,000* |
| *4.* | *Gajanan* | *19,70,610* | |
| *5.* | *Lakhi* | *1,03,00,000* | |
| *6.* | *SS Banka* | *8,40,000* | |
| *7.* | *Veer* | | *83,00,000* |
| *8.* | *Star Trading* | | *48,00,000* |
| *9.* | *Loan Repayment* | | *8,40,000* |
| | *Total* | *3,67,11,730* | *3,66,35,000* |

14.1.1. On perusal of the above document is clear that the cash receipt transactions and cash payment transactions were ₹3,67,11,730/- and ₹3,66,35,000/- respectively. However, the ld. AO computed the cash receipts and cash payments on pick and choose basis as under:-

| *Sl No.* | *Name* | *Cash Receipt* | *Cash payment* |
|---|---|---|---|
| *1.* | *Bhagatjee* | *38,76,120* | |
| *2.* | *Ramdoot* | | *2,26,95,000* |
| *3.* | *Lakhi* | *1,03,00,000* | |
| *4.* | *Veer* | | *83,00,000* |
| *5.* | *Star Trading* | | *48,00,000* |
| *6.* | *Loan Repayment* | | *8,40,000* |
| | *Total* | *3,67,11,730* | *3,66,35,000* |

14.1.2. The ld. AO made addition of ₹2,24,58,880/- being difference between the payments and receipts as unexplained cash transactions.

14.2. In the appellate proceedings, the ld. CIT (A) accepted that the ld. AO has not enquired or cross checked existence of such companies. The ld. CIT (A) further held that allegation and adverse view formed by the ld. AO against the soundness of the said entities were based on surmises and conjectures. The ld. CIT (A) held that allegation made by the ld. AO by relying on the seized material from the premises of Anita Dalmia was based on surmises and presumption and without conducting proper enquiries and without application of mind. However, the ld. CIT (A) restored the issue to the file of the ld. AO by observing and holding as under:-

*6.2 Discussion & decisions:"*

*6.2.1. I have perused the asst. order as well as the submission of the appellant. It is observed that as per the seized documents AD/1 at page no. 25, several cash receipts and payments made by the appellant were found by the AO. The details of such cash payments and receipts were mentioned at page no.18 of the asst. order. From the said details of such cash payments and receipts, the AO had determined excess of cash payment over cash receipt at Rs.2,24,58,880/-, Subsequently, the AO had made an addition of Rs.2.24 Crores as unexplained expenditure within the meaning of section 69C of the Act.*

*6.2.2. During the appellate proceedings, the appellant had contended that the total cash transaction as noted in the table drawn at page no. 18 of the assessment order was made on pick and choose basis and thereby it was claimed that the AO omitted to go through some other impugned cash receipts as were originally found noted on page-25 of the seized document AD/1. As per the contention of the appellant, in the said seized page, the aggregate of the impugned cash receipts was to the tune of Rs 3,67,11,730/- which was taken at a reduced figure of Rs.1,41,76,120/- in the table drawn (supra). According to the appellant, the aggregate of the impugned cash payment was to the tune of Rs.3,66,35,000/-instead of Rs.1.41 crores. Thus, the net difference between impugned receipt and payment claimed by the* *appellant was Rs.76,730/- (Rs.3,67,11,730/- Rs.3,66,35,000/-). Further, the appellant had also claimed that the impugned addition is based on the loose sheets of papers found from the premises of Anita Dalmia, which was found from her residence instead of the business premises of the appellant assessee, hence, no nexus with the business of the appellant assessee.*

*6.2.3. It is observed that the assessee in the asst. proceedings had not raised this contention that the aggregate of the impugned cash receipts was to the tune of Rs.3,67,11,730/- as found from page no.25 of the seized document with ID mark AD/1, which was taken at a reduced figure of Rs. 1,41,76,120/- by the AO. Only in the appellate proceedings, this claim has been raised by the appellant. Although the issue is fresh, based on seized material with ID mark AD/1, page no.25, also integral part of above discussed addition made on account of excess payment made over the cash receipts. Thus, the contention of the appellant bears the substantial yet the same is purely technical and the relevant seized material are in thepossession of the AO who can recheck the fact in the light of submissions made by the appellant during appellate proceedings as discussed vide para no.7.2. with reference to original/actual seized material. Hence, the A.O. is directed to check and verify the claim made by the assessee and then make calculation thereof to ascertain the implication of actual amount of differences between expenditure and receipts in cash (supra). The appeal effect on this issue shall be given after ascertaining/determining exact figure of the excess expenditure over cash receipts. It's need not to say that the appellant should have been given adequate amount of opportunity for hearing in the said issue and simultaneously the assessee will also cooperate with the department. Therefore, this ground of appeal raised by the appellant has been allowed only for statistical purpose."*

14.3. After hearing the rival contentions and perusing the materials available on record, we find that the ld. AO relied solely on the basis of seized document AD-1 at page no.25, which has been extracted above. A perusal of the above document reveals that the cash receipts were ₹3,67,11,730/- and cash payments were ₹3,66,35,000/-. The ld. AO prepared his own summary of cash receipts and payments which is also been reproduced hereinabove. Thus, AO made the addition of ₹2,24,58,880/- as unexplained cash transactions u/s 69C of the Act which lacked any basis. We note that the ld. AO has solely relied on the documents seized from the premises of

Anita Dalmia and her statement. We note that the said retainer has also been terminated by the company for being hostile having animosity towards the company. A FIR was also filed by the company. We note that she has also retracted the statement given during the course of search on 27.08.222, which is available at page no. 70 and 71 of the Paper Book. We note that no loose sheet or documents were found from the premises of the appellant and the assessee denied the ownership of the AD-1 document seized from the Anita Dalmia. In our opinion, the presumption u/s 292C of the Act cannot be made as the loose sheets were not found from the business premises of the assessee company. Moreover, the assessee was not provided an opportunity to cross examine Mrs. Anita Dalmia. Therefore, the order of ld. CIT (A) restoring the issue back to the file of the ld. AO is incorrect and cannot be sustained. Consequently, we set aside the order of ld. CIT (A) and direct the ld. AO to delete the addition.

14.4. The appeal of the assessee is allowed.

**A.Y. 2023-24**

**ITA No. 786/KOL/2026**

15. The issue raised in ground nos. 1,2 and 3 is against the confirmation of disallowance of ₹8,76,231/- by the ld. CIT (A) as made by the ld. AO in respect of expenditure incurred on club and entry fees subscription for various club facilities by taking the same as personal in nature.

15.1. We have heard the rival contentions and perused the materials on records. We observe that the AO disallowed the club expenses which were confirmed by the ld. CIT(A). It was submitted that the expenses were incurred out of commercial expediency for the purpose of business of the assessee as the assessee has to entertain the company's guest also. We find merit in the plea of the assessee. The case of the assessee is squarely covered by the following decisions:-

i. Otis Elevator Co. (India) Ltd. v. Commissioner of Income-Tax (1992) 195 ITR 682,

ii. Commissioner of Income-Tax v. Samtel Color Ltd. (2010) 326 ITR 425 (Delhi)

iii. Nijhawan Travel Services (P.) Ltd. vs. Assistant Commissioner of Income-tax [2025] 174 taxmann.com 464 (Delhi - Trib.)[25-04-2025]

iv. Deputy Commissioner of Income-tax vs. Phillips Carbon Black Ltd. [2025] 175 taxmann.com 352 (Kolkata - Trib.)[10-06-2025]

15.1.1. Consequently, we set aside the order of ld. CIT(A) on this issue and direct the AO to delete the addition.

15.2. The ground no 1 to 3 are allowed.

16. The issue raised in ground no.4 is against the order of ld. CIT (A) not directing the ld. AO to allow carryforward of actual business loss of ₹4,15,07,809/- relevant to A.Y. 2022-23

while computing the income for A.Y. 2023-24 and further erred in directing the ld. AO to adopt the figure from appellate order for A.Y. 2023-24, ignoring the said order is currently under appeal and has not attained finality.

16.1. After hearing the rival contentions and perusing the materials available on record, we find that the ld. AO needs to examine the issue in the light of the order of the Tribunal and allow the brought forward losses accordingly. Consequently, we restore this issue to the file of the ld. AO to examine the order of the co-ordinate bench and allow the brought forward loses to the assessee. Accordingly, ground no.4 is allowed for statistical purposes.

16.2. The appeal of the assessee is allowed for statistical purposes.

17. In the result, the appeal of the assessee in ITA No. 786/KOL/2026 is allowed for statistical purposes and other appeals of assessee are allowed.

Order pronounced and on 23.06.2026.

| | |
|---|---|
| Sd/- | Sd/- |
| (DUVVURU RL REDDY) | (RAJESH KUMAR) |
| (VICE PRESISENT) | (ACCOUNTANT MEMBER) |

Kolkata, Dated: 23.06.2026

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Asst. Registrar
Income Tax Appellate Tribunal,
Kolkata